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3040 Post Oak Blvd, Suite 1500  
Houston, TX 77056-6582  
TEL 713.623.4844  
FAX 713.623.4846

## **FACSIMILE COVER SHEET**

**DATE:** June 26, 2006  
**FILE NO:** ROC920000234US1 (IBM2K0234.Y1)  
**TO:** MAIL STOP APPEAL BRIEF - PATENTS  
Examiner Ngoc K. Vu  
**FAX NO:** 1-571-273-8300  
**FROM:** Gero G. McClellan / David M. Magness  
**PAGE(S) with cover:** 23

**RE:**

**TITLE:** Method and System for Pricing a Programming Event Viewed by Subscriber Group  
**U.S. SERIAL NO.:** 09/749,106  
**FILING DATE:** December 27, 2000  
**INVENTOR(S):** Bates et al.  
**EXAMINER:** Ngoc K. Vu  
**GROUP ART UNIT:** 2611  
**CONFIRMATION NO.:** 6268

Attached are the following document(s) for the above-referenced application:

**APPEAL BRIEF**

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### CONCLUSION

The Examiner errs in finding that claims 1-4 and 6-31 are unpatentable over *Bonomi* in view of *Pallakoff* under 35 U.S.C. § 103(a). Withdrawal of the rejection and allowance of all claims is respectfully requested.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Gero G. McClellan, Reg. No. 44,227/

Gero G. McClellan

Registration No. 44,227

Patterson & Sheridan, L.L.P.

3040 Post Oak Blvd. Suite 1500

Houston, TX 77056

Telephone: (713) 623-4844

Facsimile: (713) 623-4846

Attorney for Appellant(s)

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**JUN 26 2006**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**In re Application of:  
Bates et al.**

**Serial No.: 09/749,106**

**Confirmation No.: 6268**

**Filed: December 27, 2000**

**For: Method and System for Pricing a Programming Event Viewed by Subscriber Group**

www.elsevier.com/locate/jmb

**Group Art Unit: 2611**

**Examiner:** Ngoc K. Vu

**MAIL STOP APPEAL BRIEF - PATENTS**  
**Commissioner for Patents**  
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June 26, 2006  
Date

David M. Magness

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# APPEAL BRIEF

Applicants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 2611 dated December 27, 2005, finally rejecting claims 1-4 and 6-31. The final rejection of claims 1-4 and 6-31 is appealed. This Appeal Brief is believed to be timely since facsimile transmitted by the due date of June 24, 2006, as set by mailing of a Notice of Appeal on April 24, 2006. Please charge the fee of \$500.00 for filing this brief to Deposit Account No. 09-0465 / ROC920000234US1.

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### **Real Party in Interest**

The present application has been assigned to International Business Machines Corporation, Armonk, New York.

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### **Related Appeals and Interferences**

Applicant asserts that no other appeals or interferences are known to the Applicant, the Applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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### **Status of Claims**

Claims 1-31 are pending in the application. Claims 1-29 were originally presented in the application. Claims 1-4 and 6-31 stand finally rejected as discussed below. The final rejections of claims 1-4 and 6-31 are appealed. The pending claims are shown in the attached Claims Appendix.

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### **Status of Amendments**

All claim amendments prior to the Final office Action have been entered by the Examiner. Proposed amendments to the claims after the final rejection were not entered.



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### Summary of Claimed Subject Matter

Embodiments of the invention provide a method and system for determining a price of a program transmitted by a programming provider to subscribers. *See, e.g.,* Pg. 1, Lines 6-8; Pg. 5, Lines 1-9; Fig. 1, Item 100, 108, 104, 102. In one embodiment (*see, e.g.,* Claim 1), the method includes receiving, via a network connection, a purchase order for a program from a subscriber belonging to a subscriber group defined by two or more subscribers. *See e.g.,* Pg. 5, Lines 1-9; Pg. 8, Lines 1-4; Pg. 12, Lines 1-8; Pg. 13, Lines 10-11; Fig. 1, Items 104, 106; Fig. 7B, Items 732, 736, 738, 730.

Each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming and each subscriber belonging to the subscriber group may elect to purchase or not purchase the program. *See e.g.,* Pg. 5, Lines 1-9; Pg. 11, Lines 7-9; Pg. 12, Lines 1-2; Figure 1, Item 104, 106; Figure 7B, Item 732, 738. The method further includes determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group. *See e.g.,* Pg. 11, Lines 14-20; Pg. 13, Lines 10-19; Fig. 10, Items 1008, 1010, 1012, 1014.

One embodiment (*see, e.g.,* Claim 15) provides a system for transmitting programs to subscribers. *See, e.g.,* Pg. 1, Lines 6-8; Pg. 5, Lines 1-26; Fig. 1, Item 100, 108, 104, 102. The system includes a database containing subscriber groups and a programming provider system connected to the database. *See, e.g.,* Pg. 5, Lines 1-9; Fig. 1, Item 100, 108, 104, 103, 102. The programming provider system is configured to receive, via a network communication, purchase orders for programs from a plurality of subscribers and determine a first price for each purchase order if more than a threshold number of subscribers purchasing the same program belong to a common subscriber group. *See e.g.,* Pg. 5, Lines 1-9; Pg. 8, Lines 1-4; Pg. 12, Lines 1-8; Pg. 13, Lines 10-11; Fig. 1, Items 104, 106, 110; Fig. 7B, Items 732, 736, 738, 730; Pg. 11, Lines 14-20; Pg. 13, Lines 10-19; Fig. 10, Items 1008, 1010, 1012, 1014.

Each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming each subscriber may elect to purchase or not purchase the same program. See *e.g.*, Pg. 5, Lines 1-9; Pg. 11, Lines 7-9; Pg. 12, Lines 1-2; Figure 1, Item 104, 106; Figure 7B, Item 732, 738. The programming provider system is also configured to determine a second price, higher than the first price, for each purchase order if less than a threshold number of subscribers purchasing the same program belong to a common subscriber group. See *e.g.*, Pg. 11, Lines 14-20; Pg. 13, Lines 10-19; Fig. 10, Items 1008, 1010, 1012, 1014.

Embodiments of the invention (see, *e.g.*, Claim 22) also provide a system including a plurality of signal processing units each associated with one of a plurality of subscribers and a programming provider system connected to the signal processing units. See *e.g.*, Pg. 5, Lines 1-26; Fig. 1, Item 100, 108, 104, 102; Pg. 6, Lines 5-10; Fig. 2, Item 200. The plurality of subscribers make up subscriber groups each including at least two subscribers. See *e.g.*, Pg. 5, Lines 1-9; Fig. 1, Items 104, 106. The programming provider system is configured to transmit fee-based programming events to the signal processing units and determine prices of a programming event purchased by the plurality of subscribers. See, *e.g.*, Pg. 5, Lines 1-9; Pg. 6, Lines 5-10; Fig. 1, Items 100, 102, 112, 108; Fig. 2, Item 200.

A price for each programming event is determined according to a number of purchase orders for the same programming event received from subscribers belonging to a same subscriber group. See *e.g.*, Pg. 11, Lines 14-20; Pg. 13, Lines 10-19; Fig. 10, Items 1008, 1010, 1012, 1014. The price decreases in proportion to increasing orders from different subscribers belonging to the same subscriber group. See *e.g.*, Pg. 11, Lines 14-20; Pg. 13, Lines 10-19; Fig. 10, Items 1008, 1010, 1012, 1014. Each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming and each subscriber may elect to purchase or not purchase each programming event. See *e.g.*, Pg. 5, Lines 1-9; Pg. 11, Lines 7-9; Pg. 12, Lines 1-2; Figure 1, Item 104, 106; Figure 7B, Item 732, 738.

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**Grounds of Rejection to be Reviewed on Appeal**

Claims 1-4 and 6-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Bonomi et al.* (US 6,769,127 B1, hereinafter *Bonomi*) in view of *Pallakoff* (US 6,269,343 B1).

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## **ARGUMENTS**

### **Obviousness of Claims 1-4 and 6-31 over *Bonomi* in view of *Pallakoff*.**

#### ***The Applicable Law***

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the third criteria, as described below.

#### ***The Cited References***

In the present rejection, the Examiner cites *Pallakoff* and *Bonomi*. *Bonomi* is directed to a method and system for delivering media services and application over networks. See *Bonomi*, Title. *Pallakoff* is directed to a method and system for marketing products and services utilizing the internet. See *Pallakoff*, Col. 1, Lines 11-13.

#### ***The Examiner's Rejection and Applicants' Response***

With respect to the third criteria of the *prima facie* case of obviousness, Applicants respectfully submit that the cited references, alone or in combination, do not teach all elements of the claimed subject matter. For example, with respect to pending claims 1 and 15 and the claims that depend therefrom, each claim describes determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group and determining a second price, higher than the first price, if the program has not been purchased by the

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threshold number of subscribers belonging to the subscriber group. The Examiner argues that "*Pallakoff* teaches determining a group discount price that requires a certain number of buyers must have joined the group and purchase the product/service" at Col. 10, Lines 43-56. See *Final Office Action dated December 2, 2005* (hereinafter *Final Office Action*), Pg. 3, Para. 1.

Applicants respectfully submit that *Pallakoff* does not describe the stated claim limitation. Instead, *Pallakoff* teaches determining a price based on aggregate demand of buyers of a product (also referred to as "Demand-Based Pricing"). See Col. 1, Lines 53-67. With demand based pricing, prices for goods or services go down as the volume of units sold to buyers in any given offer goes up. See *id.* Thus, a seller can "offer volume discounts to buyers acting as a group, even when the buyers may not have any formal relationship with one another." In other words, the price in *Pallakoff* is based on aggregate demand (see Col. 4, Lines 54-55; Col. 3, Lines 53-55), also referred to as a "Demand Threshold" (Col. 4, Lines 30-36), and not on a threshold number of subscribers. See *id.*

The Examiner also appears to suggest that the "Buying Team" described in *Pallakoff* at Col. 10, Lines 43-56 is a "subscriber group" described in the pending claims. See *Advisory Action dated March 23, 2006* (hereinafter *Advisory Action*). However, in *Pallakoff*, to become a member of the Buying Team, a customer must actually purchase an item, thereby affecting the aggregate demand for units sold (the basis for the Demand-Based Pricing in *Pallakoff*), as described above. See *Pallakoff* at Col. 2, 28-29. In contrast, the pending claims indicate that "each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". Also, as described above, the price in *Pallakoff* is based on aggregate demand of members of a buying team (also referred to as a "Demand Threshold") and not on a threshold number of subscribers. See Col. 4, Lines 30-36 and Lines 54-55; Col. 3, Lines 53-55.

Accordingly, *Pallakoff* does not describe "determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group and determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group." Thus, the cited references, alone or in

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combination do not teach all elements of the claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to pending claims 1, 15, and 22, and the claims that depend therefrom, the claims also describe "a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". The Examiner states that *Bonomi* teaches a subscriber group at Figures 7A & 8C and Col. 24, Lines 56-67. See *Final Office Action*, Pg. 2, Para. 3.

The cited section (Col. 24, Lines 56-67), describes a screenshot of an administration user screen 840 in Figure 8A. The administration user management area 842 of the administration user screen 840 lists those users who are registered with the system with administrator access. See *id.* As described in *Bonomi*, the administrator may control billing, transaction monitoring, and *customer relations*. See Abstract. Also, an administrator can provide access control to *subscriber accounts by corresponding subscribers* for desired selected services. See Col. 1, Lines 36-50. Thus, *Bonomi* distinguishes between *administrators* and *subscribers*. See *id.* Figure 8C, cited by the examiner, merely depicts administration users (e.g., administrators), and does not depict *subscribers*. Col. 24, Lines 56-67; Figure 8C. Accordingly, the cited section does not describe a "subscriber group" because the cited section refers to *administrators* and does not refer to *subscribers*.

In the Examiner's *Advisory Action*, the Examiner also argues that *Bonomi* discloses multiple sub-accounts under a general account (e.g., for a family with one or more minors), citing Col. 36, Lines 20-38. *Advisory Action*, Pg. 2, Para. 1. The cited section states that the sub-accounts can be opened under a family account and *charged as a single account*. Col. 36, Lines 20-38. The sub-accounts, as indicated by the term "sub-account" and as described (with each family account charged as a single account) are not independent accounts. See *id.* In contrast, the pending claims state

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that "each subscriber belonging to the subscriber group maintains *an independent account*".

Accordingly, *Bonomi* does not teach "a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". Thus, the cited references, alone or in combination do not teach all elements of the claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

#### Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As described above, Applicants believe the base claim from which Claim 5 depends is allowable. Accordingly, Applicant submits that Claim 5 is also allowable and request withdrawal of the objection.

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## CLAIMS APPENDIX

1. (Previously Presented) A method for determining a price of a program transmitted by a programming provider to subscribers, comprising:  
receiving, via a network connection, a purchase order for a program from a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program;  
determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group; and  
determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group.
2. (Original) The method of claim 1, wherein determining the first and second prices comprises executing a pricing program.
3. (Original) The method of claim 1, further comprising preparing and sending an invoice to the subscriber for the program.
4. (Original) The method of claim 1, wherein the threshold number of subscribers is greater than one and is some portion of all the subscribers of the subscriber group.
5. (Original) The method of claim 1, wherein the threshold number is all the subscribers of the subscriber group.



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6. (Original) The method of claim 1, further comprising providing, via a network communication, at least one of the first price and the second price to the subscriber prior to the subscriber purchasing the program.
7. (Original) The method of claim 1, wherein the purchase order indicates an intent of the subscriber to view the program at a future time.
8. (Original) The method of claim 1, further comprising notifying at least one other subscriber in the subscriber group of the purchase order.
9. (Original) The method of claim 1, further comprising receiving, prior to receiving the purchase order, an electronic message indicating an intent of the subscriber to purchase the program.
10. (Original) The method of claim 9, further comprising notifying, via a network communication, at least one other subscriber in the subscriber group of the intent.
11. (Original) The method of claim 1, further comprising determining whether the subscriber belongs to the subscriber group prior to determining the price.
12. (Original) The method of claim 11, wherein the step of determining whether the subscriber belongs to the subscriber group comprises accessing a subscriber database.
13. (Original) The method of claim 1, further comprising processing a request to initiate a network dialog session with at least one other subscriber in the subscriber group.
14. (Original) The method of claim 13, handling messages sent between subscribers participating in the network dialog session.

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15. (Previously Presented) A system for transmitting programs to subscribers, comprising:
- a database containing subscriber groups each;
  - a programming provider system connected to the database and configured to:
    - receive, via a network communication, purchase orders for programs from a plurality of subscribers;
    - determine a first price for each purchase order if more than a threshold number of subscribers purchasing the same program belong to a common subscriber group, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber may elect to purchase or not purchase the same program; and
    - determine a second price, higher than the first price, for each purchase order if less than a threshold number of subscribers purchasing the same program belong to a common subscriber group.
16. (Original) The system of claim 15, wherein the programming provider is at least one of a cable provider and a satellite provider.
17. (Original) The system of claim 15, wherein the programming provider is connected to the plurality of subscribers by a network connection.
18. (Original) The system of claim 15, wherein the programs are one of a view-on-demand program and a pay-per-view program.
19. (Original) The system of claim 15 wherein the programs are movies.
20. (Original) The system of claim 15 wherein the programs are entertainment events.

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21. (Original) The system of claim 15, wherein the programs are transmitted at a predetermined time.

22. (Previously Presented) A system, comprising:  
a plurality of signal processing units each associated with one of a plurality of subscribers, wherein the plurality of subscribers make up subscriber groups each including at least two subscribers; and  
a programming provider system connected to the signal processing units and configured to:  
transmit fee-based programming events to the signal processing units; and  
determine prices of programming event purchased by the plurality of subscribers, wherein a price for each programming event is determined according to a number of purchase orders for the same programming event received from subscribers belonging to a same subscriber group, wherein the price decreases in proportion to increasing orders from different subscribers belonging to the same subscriber group, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber may elect to purchase or not purchase each programming event.

23. (Previously Presented) The system of claim 22, wherein programming provider system is configured to:  
determine a first price for each purchase order if more than a threshold number of subscribers purchasing the same programming event belong to the same subscriber group; and  
determine a second price, higher than the first price, for each purchase order if less than a threshold number of subscribers purchasing the same programming event belong to the same subscriber group.

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24. (Original) The system of claim 22, further comprising a database accessible by the programming provider system and containing a subscriber identifier for each of the plurality of subscribers and a subscriber group identifier for each subscriber group.
25. (Original) The system of claim 22, wherein the plurality of signal processing units are configured to communicate messages via a communication network.
26. (Original) The system of claim 22, wherein the programming provider system is at least one of a cable provider and a satellite provider.
27. (Original) The system of claim 22, wherein the programming provider system is connected to the plurality of subscribers by a network connection.
28. (Original) The system of claim 22, wherein the programming events are one of a view-on-demand program and a pay-per-view program.
29. (Original) The system of claim 22, wherein the programming events are movies.
30. (Previously Presented) The system of claim 15, wherein, if more than the threshold number of subscribers purchase the same program, the programming provider is further configured to transmit electronic offer notifications to those subscribers belonging to the common subscriber group who have not yet purchased the same program, the electronic offer notifications indicating that the same program may be purchased for a reduced fee as a result of the threshold number of subscribers purchasing the same program.
31. (Previously Presented) The system of claim 15, wherein, the programming provider is further configured to:
- receive electronic intent-to-view notifications from the plurality of subscribers indicating an intent to view a given program; and

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for a given electronic intent-to-view notification from a given subscriber of a given subscriber group, sending an electronic alert notification to the other subscribers of the given subscriber group, the electronic alert notification indicating the intent of the given subscriber to view the given program and further indicating availability of a price reduction if the threshold number of subscribers of the given subscriber group purchase the given program.

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## EVIDENCE APPENDIX

None.

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## RELATED PROCEEDINGS APPENDIX

None.